

Montana Tenth Judicial District Court Rules

Fergus, Judith Basin, and Petroleum Counties

Preface

The following Rules of Practice supplement the Uniform District Court Rules and the Montana Rules of Civil Procedure and any conflict shall be controlled by the Montana Rules of Civil Procedure and/or the Uniform District Court Rules.

Rule 1—Law and Motion Days

Law and motion days shall regularly be held in the courthouses in the county seats of the district as follows, except that the court may, in its discretion, hear and dispose of all law and motion matters at any place in the district:

- Fergus County, Lewistown, Montana: Every Tuesday, except holidays and trial term.
- Judith Basin County, Stanford, Montana: The second and fourth Monday of each month, except holidays and trial term.
- Petroleum County, Winnett, Montana: The first and third Monday of each month, except holidays and trial term.

Additional law and motion days may be held in any county of the district when, in the discretion of the judge presiding therein, the business of the district so requires.

Documentation Presentation. No matter may be placed on the law and motion calendar until the motion or other documentation and all relevant supporting documents have been filed with the Clerk of Court.

Continuances. Matters scheduled for law and motion may be continued by the court on its own initiative. *Ex parte* request to continue any matter set by court order for law and motion must comply with Rule 3, Uniform District Court Rules. Continuances are granted by motion only.

Notice of Submittal. The Plaintiff/Petitioner is required to file a notice of submittal after all motions have been briefed, responses filed and reply briefs filed for final order by the Court.

Rule 2—Law Library. The Law Library is no longer available for research and will not be updated on a regular basis. When required by statute and/or case law, legal research tools and materials will be made available upon written request of the individual or entity and approval by the presiding judge.

Rule 3---Facsimile Filings. The filing of any document with the Clerk of Court that may be done by mail may be done by facsimile transmission subject to the provisions of this rule.

Filing of Facsimile Document. The date and time of receipt of the transmission by the Clerk of Court shall be the date and time of filing. If the original is not served on the same day as the facsimile transmission, service of the facsimile document must be made as provided in Rule 5, M.R.Civ.P. It is the obligation of the person faxing any document to arrange for it to be delivered to the Clerk of Court's office. A faxed document must show all necessary signatures or it will not be filed by the Clerk.

Filing of Original. The sender shall, on the date of the facsimile transmission, mail the original of whatever is sent by facsimile to the Clerk of Court by first class mail. The original must be signed pursuant to Rule 11, M.R.Civ.P. The original of the document shall be filed by the Clerk and the date of filing shall be deemed to be the date of the filing of the facsimile transmission. Service of the original must be made as provided in Rule 5, M.R.Civ.P. The Certificate of Service must reflect that a facsimile transmission was sent to the Clerk of Court, and the date of such transmission. Unless an order of Court is obtained extending the time, failure of the Clerk to receive the signed original within five (5) working days shall cause the faxed document to be stricken and it shall be of no force or effect whatever. It shall be the obligation of the party filing the facsimile document to insure that the original is received by the Clerk of Court within the allotted five (5) working days.

Facsimile Receivers. Documents may be faxed to the Clerk of Court in Lewistown (Fergus County) at (406) 538-6076; to the Clerk of Court in Stanford (Judith Basin County) at (406) 566-2211; and to the Clerk of Court in Winnett (Petroleum County) at (406) 429-6328.

Fees and Costs. The use of facsimile equipment shall not change or delay the required payment of fees. It shall be the obligation of the person filing the faxed document to pay any required fees in the manner and within the time required by the Clerk of Court. It shall be the obligation of the person faxing any document to pay any costs associated with use of facsimile equipment or telephone services.

Rule 4—Calendar. In all non-contested matters, the Findings of Facts, Conclusions of Law and Proposed Orders must be filed with the Clerk of Court no later than 48 hours before the Court is to hear the matter. Each attorney shall designate in advance the matters to be presented by him/her on law and motion day. The matters so designated shall be listed by the Clerk on a law and motion calendar.

Emergency matters may be presented to the Court at any time upon adequate showing by the moving party. Parties or counsel not prepared when their matter is called from the calendar will be moved to the end of the calendar and be heard subject to available time.

Rule 5—Scheduling Procedure and Case Management.

Scheduling Procedure. Rule 16(b), M.R.Civ.P., requires a scheduling order to be issued no more than 120 days after filing of complaint. Within twenty (20) days of filing of all responsive pleadings or ninety (90) days after the filing of the complaint, *whichever comes first*, the Court will issue an Order Setting Scheduling Conference. In the absence of the Court's order, the parties may file a request for the scheduling conference.

The attorneys for the parties and any unrepresented parties shall have a phone conference with the Clerk of Court and the Court at (406) 538-8028 to discuss a proposed scheduling order. Parties should be prepared at the scheduling conference with their calendars so a firm trial date can be set. A party desiring to participate via telephone must file a request to participate by telephone. Following the scheduling conference, a Scheduling Order with discovery deadlines and trial dates will be issued by the Court.

The following matters (cases) shall be excluded from the foregoing under Rule 16(b), M.R.Civ.P.:

1. Youth Court Actions
2. Criminal Actions
3. Probates
4. Adoptions
5. Mental Commitment
6. Small Claims Appeals
7. Abstract or Transcript of Judgment
8. Administrative Appeals
9. Habeas Corpus and Post Conviction Relief
10. Name Changes
11. Abuse or Neglect Proceedings
12. Emancipation

Rule 6—Pre-Trial and Trial.

Trial Settings. Trials shall be held throughout the year as scheduled. Trials may be stacked, i.e., more than one (1) trial may be set for the same time, and if so, the Court shall determine the order of priority. Regardless of order, counsel and parties should be prepared to commence trial at the time scheduled. If preempted by another trial, the Court will reset trial.

Ex Parte Communications. There will be no *ex parte* discussion with the Court of substantive issues involving pending or anticipated cases without the presence of or notice to all opposing parties, or without prior approval or stipulation of opposing parties. A violation of this rule may result in imposition of sanctions against the offending party or attorney.

Six-Person Juries. Pursuant to § 3-15-106, MCA, in all civil actions where the relief sought in the complaint is under the sum of ten thousand dollars (\$10,000.00), the trial jury shall consist of six (6) persons. The Court encourages parties to stipulate to six-person juries in other civil cases where appropriate.

Extension of Discovery Deadlines. Discovery deadlines are to be followed. Extension of deadlines to complete discovery must be by Court order upon written request setting forth the discovery accomplished to date, the reasons for missed discovery deadlines, and a statement regarding opposing counsel's position on the request. The request must be accompanied by a proposed order identified as "Amended Discovery Order" containing proposed new deadlines.

Scheduling Orders. The Court's Scheduling Orders shall be complied with as to specific dates set forth in the Scheduling Orders. If documents are submitted to the Clerk of Court in violation of the Court's Scheduling Orders, i.e., beyond the required

filing date, such documents shall be filed only with leave of the Court. Voluminous exhibits supporting Motions to Compel, Motions for Summary Judgment and similar motions shall be accurately described in a notice filed with the Court in support of the motions, with the actual documents and exhibits being lodged with the Clerk of Court for use by the District Court and Appellate Courts. Upon conclusion of the case, the supporting documents shall be returned to the parties.

The Clerk of Court shall conspicuously post this Order Requiring Leave of Court to File Documents in Violation of Scheduling Orders and Lodging of Exhibits.

Monitoring. The Clerk of Court will monitor deadlines established by Scheduling Order(s). Failure to diligently respond to monitoring inquiries may result in sanctions, including removal from the trial calendar or loss of trial priority status.

Final Pre-Trial Conference. A date and time for the final pre-trial conference under Rule 5, Uniform District Court Rules, will be set at the scheduling conference. Each party represented by counsel will have an attorney present at the final pre-trial conference with authority to make stipulations and admissions. Counsel should inform the Court at the final pre-trial conference of health conditions or other special needs of counsel, a party or witness that will likely need attention during trial.

Exhibits. Exhibits are to be appropriately marked, with plaintiff/petitioner using numbers and defendant/respondent using letters. Proposed exhibits are to be lodged with the Court and a copy is to be provided for the bench.

Telephonic or Video Testimony. Telephonic or video testimony by witnesses should be the exception and not the rule. No telephonic or video testimony will be permitted absent leave of the Court. Should leave of the Court be granted allowing telephonic or video testimony, the party seeking leave shall be responsible for all costs associated with procuring such testimony including, but not limited to, telephone toll charges and video conferencing charges.

Sanctions. Sanctions for violating the Court's Scheduling Order or pretrial conference agenda may be imposed under Rule 16(f), M.R.Civ.P

Postponement of Trials. Requests to continue trial must be by written motion setting forth specific reasons and a statement whether other parties oppose the continuance. Continuances are addressed to the discretion of the judge. Any motion to postpone trial on grounds of absence of witness or evidence shall be supported by affidavit under § 25-4-501, MCA, showing that reasonable grounds exist to believe the absent witness or evidence cannot otherwise be obtained and that the same will be available should postponement be granted. If any action set for a jury trial is continued within 96 hours of the trial date, the Court may require the moving party to reimburse the Clerk of Court for any expenditures incurred by the Clerk of Court.

Rule 7—Dismissal for Failure to Prosecute. When no proceedings have been taken in any civil cause for a period of one year, the action will be dismissed on its merits and/or the file closed by the Court on its own motion after ten (10) days' notice of such intended dismissal unless good cause to the contrary is shown.

Any party that intends to show cause that an action should not be dismissed or the file closed will give notice of his reasons for opposing the dismissal to any other party. Within ten (10) days of such notice, any other party may file an objection and

notice the matter for hearing. The Clerk shall give notice to the attorneys of record or the parties when an action is dismissed pursuant to this rule.

Rule 8—Trial Briefs. If required by the Scheduling Order, at least two (2) days before the trial of any cause, civil or criminal, counsel shall present to the judge presiding and serve upon opposing counsel a trial brief, setting forth a statement of the theory of their cause and the issues involved, with a statement of the authorities upon which they rely as to both the laws of the case and in support of the introduction of evidence proposed to be offered.

Rule 9—*Voir Dire*—Opening Statements—Closing Arguments.

Voir Dire. *Voir dire* shall not be conducted in a manner calculated to create prejudice or bias or to disqualify the entire panel by what may be revealed by one prospective juror. Sensitive matters may, upon request, be examined one juror at a time and out of the presence of the balance of the panel. *Voir dire* shall not be used to argue the merits of the case.

The Court's Jury Trial Ground Rules (attached hereto as Exhibit "A") will supplement the aforementioned rules and will be included with both parties' Scheduling Orders for all jury trials.

The use of written instructions anticipated to be given by the Court shall not be permitted, but this does not prohibit reasonable inquiry concerning aspects of the law which are applicable to the issues.

Time limits for *voir dire* examination shall be established for each party at the final pre-trial conference, unless for good cause shown, additional time is secured from the Court.

Opening Statements—Closing Arguments. Opening statements shall be limited to one-half hour. At the conclusion of trial, closing arguments (including rebuttal) shall be limited to one hour; for good cause, additional time may be requested.

Rule 10—Stipulations and Agreements. Stipulations and Agreements between the parties or their attorneys shall be made on the record and reduced to writing.

Rule 11—Rules of Decorum.

(a) The Court adopts the Tenth Judicial District Courtroom Decorum and Practice Guidelines attached hereto as Exhibit "B."

(b) **Photography and Media.** Broadcasting, television, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of Court, or recesses between sessions, shall be allowed only with prior notice to, and specific permission of, the presiding judge. All equipment used and persons using it shall remain behind the bar. No flashlights, or other lighting equipment, or large microphones shall be used. Photographers, television cameras, and other recording devices, when allowed, shall remain stationary, and shall be used so as to not disrupt the proceedings. No photographs of or televising of the members of a jury shall be permitted.

(c) **Removal.** Parties or other persons in the courtroom while the Court is in session shall be subject to removal for behavior or actions considered disruptive or threatening.

Rule 12—Marital Dissolution Cases.

Child Support Guidelines. As long as application of Uniform Child Support Guidelines is required under § 40-4-204, MCA, a guidelines worksheet and financial affidavit(s), in accepted form, must be completed. In non-contested cases, these documents must be filed as required by § 46.30.1515, Administrative Rules of Montana. In contested cases, these documents must be offered into evidence as exhibits.

Support Variance. A party seeking variance from the support guidelines or withholding requirements must furnish written proposed findings addressing their contention the variance is supported by clear and convincing evidence.

Notice to Child Support Enforcement Division. Any petition filed to commence proceedings involving modification of child support shall include a statement whether the requesting party has knowledge of the child(ren) receiving or applying for public assistance, and if so, petitioner shall immediately notify Montana's Child Support Enforcement Division in writing of the pending action and file proof of such notice with the Clerk of Court.

Rule 13—Criminal Actions.

Financial Disclosure by Indigent. Defendants desiring Court-appointed counsel due to indigence shall file a sworn Financial Disclosure Application substantially in the form available through the Court Administrator, Sheriff's Department, or Clerk of Court. Whenever possible, copies of this application shall be made available to defendants prior to initial appearance. Under § 46-8-111, MCA, the applicant shall ratify the application under oath, at the initial appearance or any other appearance when required by the Court. This application shall inform those claiming indigence that reimbursement for all or portions of costs incurred by the county in providing appointed counsel may be required and shall contain the applicant's agreement to diligently inform the Court of any substantial change in the reported financial conditions.

Court-Appointed Counsel.

(1) **Appointment.** Upon determination of entitlement under § 46-8-101, MCA, counsel will be appointed to represent a defendant.

(2) **Compensation.** Court-appointed attorneys in criminal actions shall be compensated at rates set by the District Court Judge, which rates are within the guidelines established by the State. Expenses reasonably incurred in representation shall also be reimbursed, provided expenses shall not exceed State accepted rates, and expenses shall not exceed three hundred dollars (\$300.00) in aggregate without Court approval.

(3) **Pre-Sentence Investigation Report (PSI).** In order to determine a defendant's ability to reimburse costs of his/her defense counsel, Court-appointed counsel shall, upon request of the probation officer, provide an estimate of time incurred in providing legal services to be included in a defendant's pre-sentence report.

Bail.

Initial Bail Request. At the time of seeking leave to file an Information, the County Attorney shall submit a proposed order and may provide recommendations for bail pending initial appearance.

Bail From Lower Courts. Whenever bail has been furnished to a Justice or City Court, and the cause is transferred to District Court, bail bond or cash bond is to be transferred to the Clerk of Court by the initial appearance. If cash bail is furnished, the transfer to District Court shall identify the person or party who actually posted the cash bail.

Arraignment.

(1) **Delivery of Charging Documents.** In the absence of an emergency, and to assist in the speedy administration of justice in the District Courts, the prosecutors shall deliver a copy of any charging documents to the accused and/or his or her counsel at least 24 hours prior to the time set for arraignment in order that the accused may review them and make an informed plea at arraignment.

(2) **Court Entered "Not Guilty" Plea.** A defendant unwilling to enter a plea at the time of arraignment is subject to the Court entering a "not guilty" plea. In such event, the defendant, on request, will be allowed to reserve for a reasonable time the right to move against the charging document(s) and to file motions and assert all defenses to which he/she may be entitled.

Omnibus Hearing.

Setting. Following a plea of "not guilty", the Court will set the omnibus hearing described in § 46-13-110, MCA, usually within 30 to 45 days. Omnibus hearing will be conducted between the prosecution and defense counsel, and upon completion, submitted to the Court for approval.

Discovery. Unless motion is filed seeking protection, the prosecution shall make disclosure under § 46-15-322, MCA, or seek extension as allowed thereunder. The defendant shall make disclosure under § 46-15-323, MCA, unless a motion is filed seeking protection.

Waiver. Upon submission of a completed and signed Omnibus Hearing Memorandum Form, counsel will be deemed to have waived an omnibus hearing before the Court, absent a request to the contrary.

Mental Competency Issues. Upon motions under § 46-14-202, MCA, requesting examination, defendant's counsel shall be prepared to identify the name and business address of a qualified professional sought to conduct the examination and to discuss the availability of this professional to do the examination. Should examination be ordered upon defendant's motion, defense counsel shall be responsible to assure a report of examination under § 46-14-206, MCA, is timely filed.

Plea Agreement.

Plea Discussions. No defendant is required to discuss a plea agreement.

Written Plea Agreements. Plea agreements under § 46-12-211, MCA, must be reduced to writing, signed by counsel and the defendant, and entered into evidence.

Alford Pleas. Counsel who intend to proffer an *Alford* plea under § 46-12-212(2), MCA, must present a factual basis showing good reason for the Court to accept the plea.

Effect on Trial Setting. At its discretion, the Court may refuse to vacate a trial setting by reason of a plea agreement until after defendant has appeared and entered a plea found acceptable to the Court.

Pre-Sentence Investigation Report. In preparing a Pre-Sentence Investigation Report (PSI), the probation officer shall make reasonable effort to contact any victim(s) and inform them of a right to be present and give testimony at the sentencing hearing and seek a written statement to be attached to the PSI. Unless effectively waived by a defendant, a PSI shall be completed and filed with Court no later than one (1) week prior to sentencing. Prior to sentencing, defense counsel shall review the filed PSI with defendant.

Sentence Review. All Court-appointed attorneys will remain retained counsel for indigent defendants through sentence review petitions and procedures.

Presence of Sheriff's Department. Unless excused by the Court, an officer of the Sheriff's Department shall be present during sentencing. The prosecution shall inform the Sheriff's Department of the dates and times of all sentence hearings.

Rule 14—Youth in Need of Care.

Temporary Investigative Authority (TIA). An order of temporary investigative authority and protective services issued under § 41-3-433, MCA, shall not extend beyond ninety (90) days. The action is subject to dismissal unless the person or party filing the petition brings the matter for adjudicatory hearing under § 41-3-437, MCA, within the time period provided.

Rule 15—Confidential Criminal Justice Information.

A copy of any petition for the release of confidential criminal justice information under § 44-5-111 and § 44-5-303, MCA, shall be served by petitioning party upon each agency maintaining such information. The petition shall inform the requested agency that within twenty (20) days of service, they shall deliver to the Court for *in camera* inspection true and correct copies of the requested information or, in lieu thereof, file any response it may have to the petition. A hearing may be held at the Court's discretion. Following *in camera* inspection, should dissemination of confidential criminal justice information be allowed, the information shall be returned to the requested agency for dissemination. Dissemination shall be subject to copying costs paid in advance to the requested agency.

Rule 16—Bankruptcy.

Should a party file for protection in Bankruptcy Court, that party shall immediately notify the court in writing of the filing and provide a copy of the bankruptcy cover sheet. Upon discharge of or confirmation of a bankruptcy reorganization plan superseding any claim made in this Court, notice thereof shall be filed and upon such filing, a party may request and obtain dismissal of the claim.

Rule 17—Appeals from Justice Court or City Court.

Scheduling. When an appeal from Justice or City Court, being civil or criminal, has been filed and the record received by the Clerk of Court, the Clerk shall notify the

Court so that a scheduling conference may be set. This provision does not apply to appeals on the record from Small Claims Court.

Failure to Appear. In any appeal from Justice or City Court, if one of the parties does not appear for scheduling, the Court may dispose of the matter as the ends of justice dictate, including issuance of order dismissing the appeal.

Rule 18—Removal to Small Claims Court. All actions for recovery of money or specific personal property where the amount in controversy does not exceed three thousand dollars (\$3,000.00) shall be subject to removal to Small Claims Court pursuant to § 3-10-1004, MCA.

Rule 19—Closure of Estates.

The Clerk of Court shall notify the judge of all estate matters that remain pending two (2) years after appointment of the personal representative. The Court may thereupon order the personal representative and attorney to appear and show cause under § 72-3-1015, MCA, why the estate has not been closed.

Rule 20—Evidence as to Character.

Not more than two witnesses will be allowed to testify as to character in any cause, civil or criminal, without leave of the Court being first asked and obtained.

Rule 21—Alternative Dispute Resolution.

Mediation. Parties, at their cost, may voluntarily retain a private individual for mediation of their case. In such case, mediation shall be a confidential meeting between the parties and the mediator to seek and promote communication between the parties with a view toward reaching a settlement agreement. Parties may agree to attend mediation without counsel. Any agreement reached in mediation shall be promptly reduced to writing and upon execution by parties, a written status report shall be filed with the Court.

Settlement Conference. In all civil cases, the Court may require at any time a settlement conference before an appointed settlement judge or master. Any party may move the Court to order a settlement conference with an appointed settlement judge or master. At the discretion of the Court, trial may be postponed or not set until after a settlement conference.

Settlement Judge or Master. The settlement judge may be either a current or retired State District Court Judge. The settlement master may be any person qualified under Rule 58, M.R.Civ.P.

Settlement Conference Defined. A settlement conference is a confidential meeting between the parties, attorneys and the settlement judge/master with a view toward negotiating a settlement. Each party will submit to the settlement judge/master a confidential settlement statement containing a summary of their case and description of strengths and weaknesses on each side. The parties and their attorneys must be present unless excused by the settlement judge/master.

Sanctions. Failure of a party or counsel to participate in a Court-ordered settlement conference may result in sanctions such as imposition of costs and attorney's fees incurred by opposing party in preparation for settlement conference.

Confidential. No person present at a settlement conference shall be subject to examination concerning statements made by any other person at the settlement conference. Parties cannot subpoena or otherwise require the appointed settlement judge/master to testify regarding his/her opinions or other matters expressed at the settlement conference.

Attendance of Insurance Claims Person. In all cases where pertinent, claims representative(s) from insurance companies, with requisite settlement authority, shall be required to attend the settlement conference in person or by speaker phone. Upon good cause shown, the Court may require personal appearance.

Fees. Fees charged by a settlement judge/master may be imposed upon parties at the discretion of the Court.

Settlement Documents. If a case is settled by settlement conference or other method before the trial date without documentation, parties shall forthwith inform the Court in person or by conference call and a minute entry will be made vacating trial as the case has been settled. Once of record, the agreement is binding and enforceable. Within thirty (30) days, settlement documents must be prepared and filed.

Sealing Confidential Information. The Court reserves the right to deny a request to seal sensitive information as part of a settlement, if disclosure of the information is in the public interest.

Rule 22—Miscellaneous.

Law Clerk. The judge shall have a Law Clerk to perform such duties as the District Court Judge shall direct, including research, preparation of findings and conclusions, and serving as a special master.

The Court reserves the right to assign all dissolution matters to its Law Clerk who shall serve as a special master pursuant to Rule 53, M.R.Civ.P., and § 3-5-113 (2001), MCA.

Rule 23—Amendment Relief.

Amendment. Amendments to these rules may be made from time to time by Court order filed with the Clerk of Court for each county within the Tenth Judicial District.

Relief. If counsel believe in good faith they have a situation which is not covered adequately by these rules, or need relief from the application of these local rules, counsel may, upon application, present such matters to the Court for its consideration.

Applicability. These rules, in addition to the Uniform District Court Rules, shall apply to all cases in each Court in each county in said district, and shall be entered upon the minutes of this Court in each county of said district. The Clerk of Court shall keep an original copy of these rules and any amendments thereto.

Pursuant to § 3-1-112, MCA, the District Court of the Tenth Judicial District of the State of Montana, in and for the counties of Fergus, Judith Basin, and Petroleum, hereby adopts the foregoing District Court Rules for the practice and proceedings of the Tenth Judicial District of the State of Montana, and that the same be entered upon the minutes of this Court in each county of this district, and that they be printed for distribution among the attorneys of this Court.

IT IS HEREBY ORDERED that the foregoing District Court Rules take effect on February _____, 2003, and that thereupon any former rules of this Court are abrogated.

DATED this _____ day of February 2003.

E. WAYNE PHILLIPS, DISTRICT COURT JUDGE